Teklezgi v SMBC Capital Mkts., Inc.
2019 NY Slip Op 30210(U)
January 23, 2019
Supreme Court, New York County
Docket Number: 159775/2017
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED **PART** IAS MOTION 2

Justice

----------X

BENYAM TEKLEZGI,

Plaintiff,

- v -

SMBC CAPITAL MARKETS, INC.,

Defendant.

INDEX NO. 159775/2017

MOTION DATE 05/08/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ordered that the motion is denied as follows.

In this action by plaintiff Benyam Teklezgi seeking to recover damages against his former employer, defendant SMBC Capital Markets, Inc., pursuant to the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"), defendant moves, pursuant to CPLR 3211(a)(7), to dismiss the complaint on the ground that it fails to state a cause of action. Plaintiff opposes the motion. After a review of the motion papers, as well as a review of the relevant statutes and case law, the motion is denied.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff was hired by defendant, a financial services firm, as a junior credit analyst in 2014. Doc. 2 at par. 3. In July 2015, plaintiff advised defendant that, at his doctor's recommendation, he needed to take time off from work due to upper back and shoulder pain. Doc. 2 at par. 4.

Plaintiff provided defendant with documentation supporting the need for him to take time off from work and defendant approved his request to take the time off. Doc. 2 at pars. 5-6. Plaintiff's medical leave of absence commenced on or about July 24, 2015 and his anticipated return to work was to be on August 17, 2015. Doc. 2 at pars. 8-9. Upon returning to work, plaintiff was terminated. Doc. 2 at par. 10.

On November 2, 2017, plaintiff commenced the captioned action against defendant, alleging as first and second causes of action, respectively, disability discrimination against him based on New York State Executive Law § 290 et seq. ("NYSHRL") and based on New York City Administrative Code § 8-101 et seq. ("NYCHRL"). Doc. 2. In pleading the claim pursuant to NYSHRL, plaintiff alleged, inter alia, that he suffered from a "disability"; that he was qualified for his position as a junior analyst; that defendant was aware of its obligation to provide him with a reasonable accommodation; that accommodating plaintiff would not be a hardship; and that defendant's decision to terminate him was based, in whole or in part, on actual or perceived disability; that defendant in fact discriminated against him based on his disability; and that defendant's conduct was wanton and willful. Doc. 2 at pars. 11-19, 21-28.

Defendant now moves, pursuant to CPLR 3211(a)(7), to dismiss the complaint due to plaintiff's failure to state a cause of action. Docs. 4-7. Specifically, defendant argues that plaintiff fails to state a claim because he did not demonstrate that he had a disability or that his alleged disability resulted in his termination. Defendant further asserts that plaintiff's alleged condition cannot be considered a disability since it was only temporary.

In opposition, plaintiff argues that he sufficiently pleaded that he had a disability or that defendant perceived him to be disabled. In furtherance of this argument, plaintiff annexes to his affidavit in opposition to the motion doctor's notes reflecting that he was treated for "severe left

upper back pain", that he should be excused from work from July 24 – 31, 2015, and that, as a result of a "medical condition which has flared up and [for which he] was prescribed rest, he [would] need to be excused from work [from] August 5 to August 12, 2015 to recover and undergo further treatment during [that] period." Doc. 9 at par. 5. Additionally, plaintiff claims that, since he was fired one hour after returning to work, he has established, through temporal proximity, a causal connection between his disability and his termination.

In reply, defendant argues that the medical notes submitted by plaintiff fail to establish that he had a disability. It further maintains that temporal proximity between a disability and termination is, in and of itself, insufficient to establish causation in a discrimination claim.

LEGAL CONSIDERATIONS:

Defendants move for dismissal of the complaint pursuant to CPLR 3211(a)(7). "[R]egardless of which subsection of CPLR 3211 (a) a motion to dismiss is brought under, the court must accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Ray v Ray*, 108 AD3d 449, 451 (1st Dept 2013); *see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 (2001); *Leon v Martinez*, 84 NY2d 83, 87-88 (1994). While it is true that "factual allegations presumed to be true on a motion pursuant to CPLR 3211 may properly be negated by affidavits and documentary evidence" (*Facebook, Inc. v DLA Piper LLP (US)*, 134 AD3d 610, 613 [1st Dept 2015] [internal quotation marks, brackets and citations omitted]), no such documentary evidence has been submitted by defendant in support of the instant motion.

"Where extrinsic evidence is used, the standard of review on a CPLR 3211 (a) (7) motion is whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one." *M & B Joint Venture, Inc. v Laurus Master Fund, Ltd*, 49 AD3d 258 (1st Dept 2008), *mod* 12 NY3d 798 (2009) (internal quotation marks and citation omitted); *see Basis Alpha Fund (Master) v Goldman Sachs Group., Inc.*, 115 AD3d 128, 134-135 (1st Dept 2014); *Gym Door Repairs, Inc. v Astoria Gen. Contr. Corp.*, 144 AD3d 1093, 1094-1095 (2d Dept 2016); *Allen v Gordon*, 86 AD2d 514, 514-515 (1st Dept 1982), *affd* 56 NY2d 780 (1982).

Pursuant to the NYSHRL, as set forth in Executive Law § 296 (1) (a), it is an unlawful discriminatory practice for an employer to terminate an individual based, inter alia, on his or her age, race, national origin, or disability. Similarly, pursuant to the NYCHRL, as set forth in New York City Administrative Code § 8-107(1)(a), it is unlawful, inter alia, to discharge an individual based on his or her age or perceived age, race, national origin, or disability. The NYCHRL is to be construed more liberally than its state or federal counterparts. *Barnum v New York City Tr. Auth.*, 62 AD3d 736, 738 (2d Dept 2009). The court must evaluate the claims with regard for the NYCHRL's "*uniquely broad and remedial purposes . . . .*" *Williams v New York City Hous. Auth.*, 61 AD3d 62, 66 (1st Dept 2009) (*emphasis added*).

Plaintiff must establish that he has a prima facie case of discrimination by showing that "(1) [he] is a member of a protected class; (2) [he] was qualified to hold the position; (3) [he] was terminated from employment . . . ; and (4) the discharge . . . occurred under circumstances giving rise to an inference of discrimination." *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 (2004); *see also McDonnell Douglas Corp. v Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973); *Baldwin v Cablevision Sys. Corp.*, 65 AD3d 961, 965 (1st Dept 2009).

At the pleading stage, "employment discrimination cases are themselves generally reviewed under notice pleading standards" and plaintiff is not required to establish his or her prima facie case with any heightened level of specificity beyond what is required pursuant to the CPLR. *Vig v New York HairSpray Co., L.P.*, 67 AD3d 140, 145 (1st Dept 2009).

This Court finds, after affording the complaint a liberal construction and accepting all facts as alleged therein to be true, and according plaintiff the benefit of every favorable inference (*see Nonnon v City of New York*, 9 NY3d 825, 827 [2007]), and after reviewing the notes written by plaintiff's physician, that plaintiff has viable causes of action alleging discrimination based on a disability pursuant to the NYSHRL and the NYCHRL. Despite defendant's arguments regarding, inter alia, causation and a lack of specificity regarding plaintiff's condition, "[a] motion to dismiss merely addresses the adequacy of the pleading, and does not reach the substantive merits of a party's cause of action." *Kaplan v New York City Dept. of Health & Mental Hygiene*, 142 AD3d 1050, 1051 (2d Dept 2016). Thus, "whether the pleading will later survive a motion for summary judgment, or whether the party will ultimately prevail on the claims, is not relevant on a pre-discovery motion to dismiss" *Kaplan*, 142 AD3d, at 1051, quoting *Lieberman v Green*, 139 AD3d 815, 816 (2d Dept 2016).

Therefore, in light of the foregoing, it is hereby:

ORDERED that defendant's motion is denied; and it is further

ORDERED that, within 30 days of the entry of this order, plaintiff's attorney is to serve a copy of the same, with notice of entry, upon counsel for defendant; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 30 days after service of a copy of this order, with notice of entry, by plaintiff's counsel; and it is further;

ORDERED that the parties are to appear for a preliminary conference in this matter on April 30, 2019 at 80 Centre Street, Room 280, at 2:15 p.m.; and it is further

ORDERED that this constitutes the decision and order of the court.

1/23/2019
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE